

**ELECTRONICALLY FILED  
MAY 19, 2006**

JEFFREY H. DAVIDSON  
(CA State Bar No. 73980),  
FRANK A. MEROLA  
(CA State Bar No. 136934), and  
EVE H. KARASIK  
(CA State Bar No. 155356), Members of  
STUTMAN, TREISTER & GLATT, P.C.  
1901 Avenue of the Stars, 12th Floor  
Los Angeles, California 90067  
Telephone: (310) 228-5600  
Facsimile: (310) 228-5788  
Email: [jdavidson@stutman.com](mailto:jdavidson@stutman.com)  
[fmerola@stutman.com](mailto:fmerola@stutman.com)  
[ekarasik@stutman.com](mailto:ekarasik@stutman.com)

SHEA & CARLYON, LTD.  
JAMES PATRICK SHEA, ESQ.  
(NV State Bar No. 000405)  
CANDACE C. CARLYON  
(NV State Bar No. 002666)  
233 S. Fourth Street, Second Floor  
Las Vegas, NV 89101  
Telephone: (702)471-7432  
Facsimile: (702)471-7435  
Email: [jshea@sheacarlyon.com](mailto:jshea@sheacarlyon.com)  
[ccarlyon@sheacarlyon.com](mailto:ccarlyon@sheacarlyon.com)

[Proposed] Special Counsel for Official Committee of Equity Security Holders  
of USA Capital First Trust Deed Fund, LLC and USA Capital Diversified Trust Deed Fund,  
LLC; and for the Official Committee of Executory Contract Holders of USA Commercial  
Mortgage Company

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:	)	BK-S-06-10725-LBR
USA COMMERCIAL MORTGAGE COMPANY	)	Chapter 11
Debtor.	)	
In re:	)	BK-S-06-10726-LBR
USA CAPITAL REALTY ADVISORS, LLC,	)	Chapter 11
Debtor.	)	
In re:	)	BK-S-06-10727-LBR
USA CAPITAL DIVERSIFIED TRUST DEED	)	Chapter 11
FUND, LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10728-LBR
USA CAPITAL FIRST TRUST DEED FUND,	)	Chapter 11
LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10729-LBR
USA SECURITIES, LLC,	)	Chapter 11
Debtor	)	

**DECLARATION OF JAMES PATRICK SHEA IN SUPPORT OF SHEA & CARLYON  
EMPLOYMENT APPLICATION**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Co.
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed
- ☒ USA First Trust Deed Fund, LLC

DATE: June 5<sup>th</sup>, 2006  
TIME: 9:30 a.m.

**DECLARATION OF JAMES PATRICK SHEA, ESQ. AND STATEMENT OF  
DISINTERESTEDNESS OF SHEA & CARLYON IN SUPPORT OF APPLICATION  
FOR ORDER APPOINTING SHEA & CARLYON, LTD. AS SPECIAL (NEVADA)  
COUNSEL FOR THE OFFICIAL COMMITTEES OF EQUITY SECURITY  
HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC AND USA  
CAPITAL DIVERSIFIED TRUST DEED FUND, LLC; AND THE OFFICIAL  
COMMITTEE OF HOLDERS OF EXECUTORY CONTRACT RIGHTS OF USA  
COMMERCIAL MORTGAGE COMPANY  
(AFFECTS CASE NO. 06-10725-USA COMMERCIAL MORTGAGE COMPANY; 06-  
10729- USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC; AND 06-10728-  
USA CAPITAL FIRST TRUST DEED FUND, LLC)**

I, James Patrick Shea, Esq., hereby declare and state as follows:

1. The following facts are personally known to me and if called to testify thereto,  
I could and would do so under oath.

2. I make this declaration and statement of disinterestedness in support of the  
Application (the "Application") for Order Appointing Shea & Carlyon, Ltd. as Special  
(Nevada) Counsel for the Official Committees Of Equity Security Holders of USA Capital  
First Trust Deed Fund, LLC, and USA Capital Diversified Trust Deed Fund, LLC; and the  
Official Committee of Holders of Executory Contract Rights of USA Commercial Mortgage  
Company (collectively, the "Investor Committees").

3. I am an attorney duly admitted to practice law by the State of Nevada and this  
Court.

4. I am a shareholder of Shea & Carlyon, Ltd. ("Shea & Carlyon"). All members

1 of Shea & Carlyon are duly admitted and licensed to practice law in the state of Nevada.

2           5.       The members of Shea & Carlyon are experienced in the areas of insolvency,  
3 bankruptcy litigation, commercial litigation, business reorganization and other debtor/creditor  
4 matters. Members of Shea & Carlyon have served as bankruptcy counsel to a wide range of  
5 parties in interest and as counsel for other committees. A copy of Shea & Carlyon's resume is  
6 attached to the Application as Exhibit 1 thereto.

7           6.       Shea & Carlyon has not shared or agreed to share compensation with any entity  
8 except as among members of Shea & Carlyon.

9           7.       Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the  
10 Local Bankruptcy Rules, and the United States Trustee Guidelines, Shea & Carlyon proposes  
11 that it should be compensated at its customary hourly rates in effect from time to time and  
12 reimbursed for expenses according to its customary reimbursement policies. Shea &  
13 Carlyon's hourly rates currently range from \$325-\$425 for shareholders and "of counsel;"  
14 \$190 per hour for associates; and \$120 - \$150 per hour for legal assistants and  
15 paraprofessionals. Such rates are subject to change. While it is not known what increases  
16 may occur or over what time period services will be rendered, generally rates are increased by  
17 approximately 5% - 10% effective on January 1<sup>st</sup> of each year. A summary of Shea &  
18 Carlyon's current hourly rates is attached to Shea & Carlyon's Application as Exhibit 2  
19 thereto.

20           8.       In addition, Shea & Carlyon will seek reimbursement for expenses incurred in  
21 representation of the Investor Committees, which may include charges for photocopies (\$.25  
22 per page); telefax (\$1.00 per page for long distance, \$.50 per page local); messenger (generally  
23

1 \$7.50 to \$10.00 per "run", unless actual third party costs is higher); Westlaw (actual cost)<sup>1</sup>;  
 2 long distance telephone (actual cost), scanning/large print jobs (\$.10 per page); filing fees,  
 3 court reporter fees, bankruptcy court copies, tapes and transcripts.

4  
 5 9. Shea & Carlyon reserves the right to seek compensation for services rendered  
 6 in connection with the Committee of Concerned Investors to the extent that the Court  
 7 determines such work and services to have benefited the Investor Committees or that the  
 8 services constituted a substantial contribution to the bankruptcy cases.

9  
 10 10. It is contemplated that Shea & Carlyon may seek interim compensation during  
 11 the case as permitted by 11 U.S.C. § 331 and Fed. R. Bankr. P. Rule 2016. Shea & Carlyon  
 12 understands that its compensation in this case is subject to the prior approval of this Court.  
 13 No compensation will be paid by the estate except upon application to and approval by this  
 14 Court after appropriate notice and a hearing in accordance with 11 U.S.C. § 331, Fed. R.  
 15 Bankr. P. Rule 2016, and the United States Trustee's guidelines regarding the employment  
 16 and compensation of professional persons.

17  
 18 11. To the best of my knowledge, and based upon the Declaration of  
 19 Disinterestedness herein, neither Shea & Carlyon, nor any of its shareholders have any present  
 20 connection with the Investor Committees, the debtors, any creditors of the estate, any party in  
 21 interest, their attorneys or accountants, the United States Trustee and any person employed in  
 22 the office of the United States Trustee other than as set forth in this Declaration and as stated  
 23  
 24  
 25

---

26 <sup>1</sup> Shea & Carlyon currently subscribes to unlimited use of federal and state cases and statutes and does not pass  
 27 charges for such flat fee subscriptions on to its clients.

1 below. Shea & Carlyon is not a prepetition creditor, and its employment would be in the best  
2 interest of the estate.

3 12. With respect to Shea & Carlyon's involvement with, or representation of, the  
4 debtors and/or creditors in this Bankruptcy Case, Shea & Carlyon states the following:  
5

6 a. The spouse of one of Shea & Carlyon's shareholders is an attorney in the Clark  
7 County District Attorney's office, Civil Division, with no duties relating to  
8 collection of claims in bankruptcies. Clark County may be a creditor in one or  
9 more of the USA Cases;

10 b. Shea & Carlyon represents Wells Fargo Bank ("Wells Fargo") in numerous  
11 matters, including issues relating to the USACMC prepetition and postpetition  
12 bank accounts, as well as prepetition debts owed by USACMC to Wells Fargo.  
13 (The general counsel for the Debtors in the USA Cases, Ray, Quinney &  
14 Nebeker, PC, also represents Wells Fargo in numerous unrelated matters.) On  
15 May 8, 2006, this Honorable Court entered its Final Order Approving  
16 Stipulation re Setoff and Bank Accounts, permitting Wells Fargo to set off  
17 amounts due to Wells Fargo against funds on deposit by USACMC. Debtors  
18 have since moved their bank account relationships to Bank of America.  
19 However, two issues have been raised by USACMC relative to Wells Fargo.  
20 First, Wells Fargo has advised USACMC that it intends to close all prepetition  
21 USACMC accounts at Wells Fargo. USACMC has alleged that Wells Fargo is  
22 prohibited by the Automatic Stay from doing so. Second, Debtors have  
23 asserted that the payment of three items postpetition from the USACMC  
24 account was improper. These items total approximately \$100,600. Wells  
25  
26  
27  
28

1 Fargo and USACMC continue to discuss these issues. Shea & Carlyon and  
2 ST&G have agreed that any matter arising with respect to Wells Fargo that  
3 may pose a potential conflict of interest for Shea & Carlyon will be handled  
4 solely by ST&G.

5  
6 c. Shea & Carlyon has performed a computerized "conflicts check" as to the  
7 entities listed by the Debtors as the Unsecured Creditors Holding the Twenty  
8 Largest Claims, the Debtors, and the Debtors' listed insiders, including: "USA  
9 Commercial Mortgage", "USA Capital Realty Advisors", "USA Capital  
10 Diversified Trust Deed Fund", "USA Capital First Trust Deed Fund", "USA  
11 Securities", "Milanowski", "Olson", "Hamilton", "Allison", and "Hantges".  
12 Shea & Carlyon also performed a conflicts check as to the members of each of  
13 the official creditors' committees appointed in the USA Cases. The following  
14 is the result of those searches:  
15

16 (1) With regard to USACMC, in addition to the Wells Fargo issues  
17 discussed above:  
18

19 i. Shea & Carlyon formerly served as counsel to US Bank in one  
20 unrelated matter which concluded in March of 2001. US Bank is listed as one  
21 of the twenty largest unsecured creditors in the USACMC Case

22 ii. Del Bunch is listed as one of the twenty largest unsecured  
23 creditors and is a member of the Official Committee of Unsecured Creditors in  
24 the USACMC case. Candace Carlyon, Managing Partner of Shea & Carlyon,  
25 serves as a Nevada Supreme Court Settlement Judge, and presided over an  
26  
27  
28

1 unrelated matter in which Mr. Bunch was a party, which concluded in January  
2 of 2004.

3           iii. Shea & Carlyon previously represented USACMC as to a  
4 collection/bankruptcy matters relating to Bruin Nevada (last work performed  
5 on July 23, 2004), and the attorney primarily performing such services left  
6 Shea & Carlyon in 2005. Shea & Carlyon was also engaged as a potential  
7 witness in a divorce proceeding involving one of the principals of USACMC,  
8 Thomas Hantges (last work performed on March 11, 2004). Shea & Carlyon  
9 did not serve as general counsel for USACMC, and did not obtain any  
10 information of a confidential nature relative to matters involved in the USA  
11 Cases.  
12

13           iv. Additionally, in 2002, Shea & Carlyon represented Young  
14 Electric Sign Company ("YESCO"), in drafting and executing a lease  
15 amendment and several guaranties with regard to which YESCO was the lessor  
16 and HMA Sales, LLC dba Royal Palms, was lessee. The guarantors in that  
17 transaction included USACMC, USA Investment Partners LLC, Thomas  
18 Hantges, and Joseph D. Milanowski, a principal of USACMC. Shea &  
19 Carlyon does not currently represent YESCO in that matter, and is not in  
20 possession of any confidential information from USACMC or any of its  
21 affiliates or insiders relative to the USA Cases.  
22

23           v. ST&G and Shea & Carlyon served as counsel for the  
24 Committee of Concerned Investors, an unofficial committee formed prior to  
25 the appointment of the official committees in the USA Cases, solely for the  
26  
27  
28



1 purpose of advocating the response to the Debtors' proposed Cash  
 2 Management Motion. A copy of the response filed by that group appears at  
 3 docket no. 119.

4 (2) In addition, Shea & Carlyon represented both USACMC and USA  
 5 Diversified LLC as creditors in the following jointly administered bankruptcy  
 6 cases, designated case nos. 01-11791 through 11724 respectively: In re  
 7 Principle Centered, Inc.; In re American Destination, II, LLC; In re American  
 8 Enchantment II, LLC; In re American Harmony II, LLC; In re American  
 9 Inspiration, LLC; and In re American Imagination, Inc. The last work  
 10 performed on these matters was on May 30, 2003. Some or all of the debtors  
 11 in these cases were successors in interest or were otherwise affiliated with  
 12 American Communities, LLC, American Communities, Inc, or American  
 13 Communities, LLP. Shea & Carlyon is not in possession of any confidential  
 14 information relating to the USA Cases as a result of such former  
 15 representation.

16 d. USACMC is a servicing agent for approximately 3,600 investors who hold  
 17 fractional interests in specific loans, and for approximately 3,200 investors  
 18 who hold membership interests in both USA Diversified LLC and USA First  
 19 LLC. Shea & Carlyon has not attempted to process each investor's name  
 20 through its "conflicts check" system.

21 13. Shea & Carlyon has been requested to serve as special (Nevada) counsel to  
 22 ST&G with regard to the representation of all three Investor Committees. However, the  
 23 Investor Committees, Shea & Carlyon, and ST&G have agreed that, to the extent that any



1 conflict of interest arises among the several Investor Committees which the Investor  
2 Committees determine cannot be resolved consensually among themselves, separate conflicts  
3 counsel will be engaged for such matters.

4 13. Shea & Carlyon is not an equity security holder or an insider of the Debtor.

5 14. Shea & Carlyon is not a prepetition creditor, and, other than as set forth above,  
6 Shea & Carlyon has never represented the any of the USA debtors.

7 15. Neither Shea & Carlyon, nor any associate or shareholder of Shea & Carlyon,  
8 is or was an investment banker for any outstanding security of any of the USA debtors, or an  
9 attorney for such an investment banker in connection with the offer, sale or issuance of any  
10 security of any of the Debtors.

11 16. Neither Shea & Carlyon, nor any associate or shareholder of Shea & Carlyon is  
12 or was a director, officer or employee of any of the USA debtors or of any investment banker  
13 for any security of the USA debtors.

14 17. Neither Shea & Carlyon, nor any shareholder in Shea & Carlyon has an interest  
15 materially adverse to the interest of the estate or of any class of creditors or equity security  
16 holders, by reason of any direct or indirect relationship to, connection with, or interest in, the  
17 USA debtors or an investment banker for any security of the USA debtors, or for any other  
18 reason.

19 18. Based upon the foregoing, it is my belief that neither Shea & Carlyon, nor any  
20 shareholder in Shea & Carlyon, represents any interest adverse to the Investor Committees for  
21 which it is to be retained. Accordingly, Shea & Carlyon is disinterested under sections  
22 101(14) and 327(a) and (c) of the Bankruptcy Code.

23 19. I am familiar with the Bankruptcy Code, Federal Rules of Bankruptcy  
24

1 Procedure, Local Bankruptcy Rules and United States Trustee Guidelines and will attempt to  
2 comply with them in all proceedings before the Court.

3 20. To the best of my knowledge, after conducting or supervising the investigation  
4 described above, I declare under penalty of perjury that the foregoing is true and correct.  
5

6 DATED this 19th day of May, 2006.

7 SHEA & CARLYON, LTD.  
8

9 JAMES PATRICK SHEA, ESQ.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28